



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,388	05/25/2001	Mary Kay Bitton	212/332	4199

23371 7590 04/01/2003

CROCKETT & CROCKETT
24012 CALLE DE LA PLATA
SUITE 400
LAGUNA HILLS, CA 92653

EXAMINER

LECHERT JR, STEPHEN J

ART UNIT	PAPER NUMBER
----------	--------------

1732

DATE MAILED: 04/01/2003

2

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/865,388

Applicant()

BITTON, MARY KAY

Examiner

Stephen J. Lechert Jr.

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-6 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other:

Art Unit: 1732

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-4, drawn to a method of imprinting sand or snow, classified in class 264, subclass 109.
 - II. Claims 5-6, drawn to a method of packaging and selling, classified in class 53, subclass 396.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are to a method of imprinting sand or snow which does not require the packaging, displaying and selling of the stamping tools. The method of packaging does not require the imprinting sand or snow as required by the group I claims.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Ms. Crockett on February 26, 2002 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-4. Affirmation of this election must be made by applicant in replying to this

Art Unit: 1732

Office action. Claims 5-6 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Action on the merits of claims 1-4 follows:

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ayres in combination with Conrad.

Ayres teaches the invention substantially as claimed. Ayres teaches a method of cutting a sand and binder mixture which has a dough-like consistency, which is rolled into a sheet which is then subsequently cut or stamped into silhouette shapes using a cookie cutter. The cookie cutter has the silhouette blade.[Note the abstract and Column 2, lines 51-56 and Column 4, lines 36-41]

Art Unit: 1732

However, Ayres does not teach using a cookie cutter with handle with plate and the detail blades.

Ayres teaches using a conventional cookie cutter which has the silhouette of the shape provided.

Conrad teaches a dough or cookie cutter having a handle for grasping by the user which has an outer cutting element which cuts the silhouette shape as well as detail blades which extend from a base member that can provide the figure with detail and these blades have a height less than the height of the circumferential silhouette blade
~~blade~~

It would have been obvious from reading the combined teachings of Ayres and Conrad to provide a method of stamping snow or sand which provides an imprint of a desired shape with a modicum of force by the cookie cutter. Conrad teaches a cookie cutter which provides the detail as well as the over all shape of the cut out dough which is substantially the same as the stamp used in processing the sand. To use a cookie in sand has been specifically taught in Ayres, thus to use the specific cookie cutter of Conrad in the sand and binder process of Ayres would have been obvious substitution where a generic cookie cutter has been taught. The method as claimed is rendered wholly obvious by the combined teachings of Ayres and Conrad. To use the cookie cutter of Conrad in sand or snow as claimed by applicant would have been obvious to one having ordinary skill in the art and would provide the same shaping and detailed results in sand or snow absent criticality in showing. Applicant is using a notoriously old cookie cutting device in stamping or imprinting snow or sand, the method of stamping or

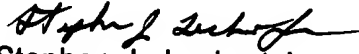
Art Unit: 1732

imprinting with the notoriously old cookie cutting device in dough is known to use a notorious well known device and well known method of cookie cutting dough does impart patentability in a method where the medium (i.e., snow or sand) has been changed. The only difference in the method of using the Conrad cookie cutter and applicant's method is the medium being cut, otherwise the method has been taught as well as the device for cutting the medium thus rendering the invention as a whole obvious to one having ordinary skill in the art at the time the invention was made.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Lechert Jr. whose telephone number is 703-305-6156. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on 703-308-3853. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.


Stephen J. Lechert Jr.
Primary Examiner
Art Unit 1732